# RECENT CASES

APPEAL—DIVISION OF JUDGES—AFFIRMANCE.—CLARK V. WABASH RY. CO., 109 N. W. 309 (IOWA).—*Held,* that on appeal, if the State Supreme Court is equally divided, the ruling of the lower court is affirmed by operation of law.

The judgment will be affirmed or exceptions over-ruled when the Appellate Court is divided in opinion, *Etting v. United States Bank,* 24 U. S. 59; *Clark v. Kean,* 1 Del. Ch. 144; otherwise the majority opinion rules, *Beaulieu v. Furst,* 2 La. Ann. 46; and it matters not if such is reached by different reasoning. *Oakley v. Aspinwall,* 8 N. Y. Sup. 1. It follows that when the Court of Appeals is equally divided in opinion as to part of the decree appealed from, it must be affirmed as to so much; and if they concur or a majority of them concur, that there is eror in the residue, so much of it must be reversed. *Commonwealth v. Beaumarchais,* 3 Call. 122 (Va.). But in the National Supreme Court, if on a constitutional question, a majority is required to pronounce a judgment, *Briscoe v. Commonwealth Bank,* 33 U. S. 118; as to jurisdiction, if equal division, the jurisdiction is sustained and the case is decided on its merits. *State v. Hays,* 30 W. Va. 107; *contra,* if in U. S. Supreme Court, *Coleman v. Hudson River Bridge Co., Fed. Cas.,* No. 2983. When one judge is disqualified or cannot sit in a cause, and the other two are divided, the decision below is affirmed, *Tex. & P. Ry. Co. v. Gentrey,* 13 U. S. App. 531; *contra,* no judgment can be rendered, *Bowman v. Flower,* 5 Mart. (La.) 407. But when such opinion is divided and judgment affirmed, the court are not obliged by statutes to file their opinions as in other cases, *Fraser v. Whilley,* 2 Fla. 116; nor does it settle the law, *Bridge v. Johnson,* 5 Wend. (N. Y.) 342, *Durrett v. Rucker,* 36 Ga. 272; and a bill in equity will be dismissed, *Waddle v. U. S. Bank,* 2 Ohio 336.

CONTRACTS—ABANDONMENT—PART PERFORMANCE.—CLEVELAND, C. C. & ST. L. RY. CO. V. SCOTT, 79 NORTHEASTERN, 226 (IND.).—*Held,* that a recovery may be had for a part performance of an entire contract, though there be no cause or excuse for its abandonment, if the part performed is beneficial to the defendant.

If the servant, without legal excuse, abandon the employment before full performance of an entire contract, he cannot recover anything for his services upon the contract, *Start v. Parker,* 2 Pick. 267; for under an entire contract, full performance is a condition precedent to the right of recovery thereon, *Miller v. Goddard,* 34 Me. 104; neither can he recover on an implied contract, *Laurence v. Miller,* 86 N. Y. 131; because the special contract governs the rights of the parties in respect to what has been done under it and excludes any implied contract, *Hansell v. Erickson,* 28 Ill. 257. The same applies to the contractor in the same circumstances. *Olmstead v. Beale,* 19 Pick. 528; *Peterson v. Maher,* 46 Minn. 468; *Diefenback v. Stark,* 56 Wis. 462. Although the rule very generally prevails that one guilty of a wilful breach of an entire or special, but not general contract, is without remedy for the recovery for a part performance, yet it is not universal. The